

Unlicensed Assistants



REALTORS® considering the use of personal assistants should keep in mind that from a legal standpoint, there are at least two significant decisions to be made prior to hiring a person in this capacity. First, are these services to be provided by a licensed or unlicensed person? Second, is this person going to be an employee or an independent contractor? The answers to these questions will determine in large part the nature of the job description, the reporting requirements, withholding requirements, contract requirements and the like.

Unlicensed Assistants **MAY NOT:**

- Independently show or demonstrate property to prospective buyers;
- Make cold calls by telephone or in person to potential listers, purchasers, tenants, or landlords;
- Answer any questions on title insurance, financing, or closings;
- Independently hold open houses for brokers, or staff booths in home shows or fairs;
- Solicit business through telephone prospecting;
- Give additional information not included in prepared written promotional material that has been distributed to the public (e.g., newspaper ads, flyers, brochures);
- Represent themselves as an agent for a real estate broker or the owner/seller of property;
- Have their name printed on business cards or stationery that would imply they are an agent for the real estate broker;
- Conduct telephone solicitation calls; (If John Doe, an unlicensed assistant, calls and indicates he represents ABC Realty, one is led to believe the purpose of the call is to engage in real estate activities. The definition of broker and salesperson in the Code includes one who "lists or attempts to list." Therefore, a call by an unlicensed assistant identifying him/herself as a "representative" of a real estate company is an attempt to list even if specific terms are not discussed at that time.);
- Perform any of the acts for which a license is required under Michigan Real Estate License Law. (MCL339.2501 et seq.)

Unlicensed Assistants **MAY:**

- Accompany licensees during the holding of an open house and perform the following functions as a "host" or "hostess";
 - Open the door and greet prospects as they arrive at the open house
 - Hand out or distribute prepared printed material
 - Have prospects sign a register (guest book) to record names, addresses and phone numbers for the listing
 - Accompany prospects through the home for security purposes (only the licensee should answer any questions pertaining to the material aspects of the house or its price and terms);
- Perform strictly clerical tasks;

- Function as a courier in picking up or delivering documents on behalf of the employing licensee [Note: Keys should not be given to unlicensed persons for the purpose of showing a listed property. Brokers are responsible for the properties in their listing inventory and should only give a key to a licensee who is able to show proper I.D. (e.g., valid pocket card and driver's license with photo).]

Brokers and managers must also be aware of their liability in allowing licensees to employ unlicensed assistants. Factors such as worker's compensation laws, agency law, income tax reporting and withholding requirements, sexual harassment, employment discrimination and myriad state and federal employment statutes must be carefully reviewed when allowing licensees to hire unlicensed assistants.

Brokers are responsible for the acts of their licensed salespersons and associate brokers and "shall not contract with an individual who is licensed to the broker so as to lose the authority to supervise the licensee." (MCL 339.22325) It is therefore the broker's responsibility to supervise all personnel acting under the scope of the broker's authority.

Brokers are advised to consider these issues when writing independent contracts with their salespersons and associate brokers. An attorney who is knowledgeable about employment discrimination and related employment laws should be consulted prior to drafting any independent contract section on this subject. Good research and preparation will avoid many of the problems addressed in this article.

A [complete guide](#) to Personal Assistants is available from the Michigan Association of REALTORS®.

Licensees who violate state license law by allowing unlicensed assistants to practice real estate on their behalf subject themselves to one or more of the following penalties:

- Placement of a limitation on their license.
- Suspension of license.
- Denial of license renewal.
- Revocation of license.
- A civil fine not to exceed \$10,000.
- Censure.
- Probation.
- Restitution (MCL 339.602)